

HUMAN SERVICES BOARD

INTRODUCTION

On March 4, 2009, the Board remanded the case for further information and review of the pertinent laws. A remand notice was sent to the parties on March 6, 2009 scheduling a telephone status conference for March 30, 2009. The petitioner did not appear at the telephone status conference.

The following decision is based on the evidence established at the January 13, 2009 fair hearing¹ and a subsequent review of the applicable law.

FINDINGS OF FACT

1. The petitioner is self-employed. He filled out an application for CHAP on October 30, 2008, a Thursday. He mailed the application that same day. He thought that HAEU would receive his application no later than Saturday, November 1, 2008. He was aware that there was an application deadline if he wanted coverage for preexisting medical conditions such as his ruptured Achilles' tendon. Petitioner believed the application deadline was November 1, 2008.²

2. HAEU date-stamped petitioner's application as received on Monday, November 3, 2008.

3. HAEU found petitioner eligible for CHAP as of November 14, 2008. Petitioner's actual coverage began January 1, 2009 after payment of the appropriate premium. HAEU determined that petitioner missed the October 31, 2008

¹ The parties were given an additional ten days after the hearing to supplement the record and argument; neither party submitted additional material.

² The petitioner's memory of the Department ad is that applications were due on November 1, 2008. His argument was that applications received on a Monday when the due date is a Saturday should be considered timely. The record was kept open, in part, for petitioner to submit a copy of the ad he saw in a local newspaper.

cut-off date for inclusion of preexisting medical conditions without a twelve month waiting period.

ORDER

The Department's decision that the petitioner missed the cut-off date for inclusion of preexisting medical conditions for CHAP coverage without a twelve month waiting period is affirmed.

REASONS

The Vermont Legislature passed Act 191, An Act Relating to Health Care Affordability in 2006 that includes premium assistance for uninsured adult Vermonters who are not eligible for the Vermont Health Access Program (VHAP) and whose income is equal to or less than 300% of the Federal Poverty Level (FPL). W.A.M. §§ 4102 and 4102.4.

Legislation governing CHAP addresses coverage of pre-existing conditions. The pertinent statute is 8 V.S.A. § 4080f which states:

(e)(1) For a 12-month period from the earliest date of application, a carrier offering Catamount Health may limit coverage of preexisting conditions which existed during the 12-month period before the earliest date of application, except that such exclusion or limitation shall not apply to chronic care if the individual is participating in a chronic care management program, nor apply to pregnancy. A carrier shall waive any

preexisting condition provisions for all individuals and their dependents who produce evidence of continuous creditable coverage during the previous nine months. If an individual has a preexisting condition excluded under a subsequent policy, such exclusion shall not continue longer than the period required under the original contract or 12 months, whichever is less. The carrier shall credit prior coverage that occurred without a break in coverage of 63 days or more. A break in coverage shall be tolled after the earliest date of application, subject to reasonable time limits, as defined by the commissioner, for the individual to complete the application process. For an eligible individual, as such term is defined in Section 2741 of the Health Insurance Portability and Accountability Act of 1996, a carrier offering Catamount Health shall not limit coverage of preexisting conditions.

(2) Notwithstanding subdivision (1) of this subsection, a carrier offering Catamount Health shall not limit coverage of preexisting conditions for subscribers who apply before November 1, 2008. This subdivision (2) shall not apply to claims incurred prior to the effective date of this section. (Emphasis added.)

The above statute states that individuals need to apply before November 1, 2008 which is the same as saying individuals need to apply no later than Friday, October 31, 2008 to ensure coverage of preexisting medical conditions.

The petitioner argued that the date of mailing should be used as the date of application based on the practices of agencies such as the Internal Revenue Service who use the date of mailing to determine timely filing of tax returns. Different programs look at the date of application based on the requirements in their statutes and regulations.

The CHAP program has been approved by the Center for Medicaid and Medicare as a Medicaid waiver program. As a result, the CHAP regulations incorporate the Medicaid regulations found at M100-M199 with the exception of M108. W.A.M. § 4102. The date of application is defined at M114 as the date the application is received in a Department office.

Based on the above regulations, petitioner's date of application is November 3, 2008. Unfortunately, the date of petitioner's application is after the cut-off date of October 31, 2008 for coverage of preexisting conditions.

Accordingly, the Department's decision regarding the date of application is correct. The Department's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4(D).

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